

AGREEMENT

THIS AGREEMENT made and entered, as of the latest date on signature blocks below, by and between the **CITY AND COUNTY OF DENVER** (“**Denver**” or “**City**”), a municipal corporation of the State of Colorado, which has an address of 1437 Bannock Street, Room 350, Denver, Colorado 80202, and the **GENERAL SERVICES ADMINISTRATION** for the **UNITED STATES OF AMERICA** (“**GSA**”), which has an address of Denver Federal Center, Colorado Service Center (8PSC), P.O. Box 25546, Bldg. 41, Room 240, Denver, Colorado 80225-0546.

RECITALS

A. As part of the renovation of a federal building known as the Cesar Chavez Building, located at the corner of 13th Avenue and Speer Boulevard in Denver, Colorado, the GSA made certain exterior site improvements in the plaza and parkway area in front of the Cesar Chavez Building as depicted in the attached **Exhibit B** and **Exhibit C** (“**Site Improvements**”).

B. In furtherance of the GSA’s Site Improvements and at the request of the GSA, Denver approved Ordinance No. 339, Series of 2011, recorded June 24, 2011, at Reception No. 2011068385 in the Denver Clerk and Recorder’s Office, vacating a portion of the Fox Street right of way located between 13th Avenue and Speer Boulevard in front of the Cesar Chavez Building (“**Vacated ROW**”). Under Colorado law, title to the east half of the Vacated ROW went to GSA as owner of the adjoining Cesar Chavez Building site, while the west half of the Vacated ROW (“**Westerly Vacated ROW**”) stayed in Denver’s possession as the owner of the adjoining westerly property (“**Westerly Property**”).

C. The GSA desires to obtain from Denver access to and use of the Parkway Triangle legally described as Parcel W and Lots 39 and 40 in **Exhibit A**, attached hereto and incorporated herein (“**Parkway Triangle**”). Denver retains ownership of the Parkway Triangle.

D. In consideration of Denver granting access to and use of the Parkway Triangle to the GSA, the GSA installed the Site Improvements on its own property in front of the Cesar Chavez Building and on the Parkway Triangle as depicted in **Exhibit B** and **Exhibit C**, and the GSA will maintain the Site Improvements located on the Parkway Triangle as provided in this Agreement.

NOW, THEREFORE, in consideration of the above premises and the mutual promises and covenants contained in this Agreement below, the GSA and Denver agree as follows:

1. Grant: Subject to the terms and conditions of this Agreement, Denver hereby grants, and the GSA accepts, a perpetual access to and use of the Parkway Triangle.

2. Site Improvements and Art Work: In consideration of Denver granting access to and use of the Parkway Triangle to the GSA, the GSA installed or constructed, at the GSA’s sole expense, on the Parkway Triangle the improvements that are in keeping with the drawings in the attached **Exhibit B** and **Exhibit C**. These Site Improvements include sidewalk, curb and gutter,

landscaping and irrigation system that were designed and installed or constructed in accordance with established Denver standards. In addition, Denver hereby grants to GSA the right to install art work on the Parkway Triangle. Art work may be installed upon the prior written approval of the City's Managers of Public Works and Parks and Recreation ("**Art Work**"). No vertical structures shall be installed or constructed on the Parkway Triangle without the express written approval of the City's Managers of Public Works and Parks and Recreation .

3. No Restriction on Denver Authority: Nothing in this Agreement is intended, nor shall be construed, to limit Denver's authority to operate, control, maintain, repair or replace any portion of its public right of way or parkway. As Denver deems necessary and proper, Denver shall have the right to enter and occupy the Parkway Triangle to make road improvements and repairs, to provide for traffic operations and control (including signage and traffic lights), and to repair, replace or relocate utilities and communication systems. Upon completion of any such work, Denver will endeavor to restore any improvements made by the GSA to the Parkway Triangle back to their original or comparable condition.

4. Maintenance: The GSA agrees to undertake the care and maintenance, including all repairs and replacements, of the Site Improvements and the Art Work. Denver hereby grants a license to the GSA to enter the Parkway Triangle to perform these maintenance responsibilities. The Parkway Triangle shall be maintained by the GSA in a safe and sanitary condition and, except when closed for maintenance or repairs or during an emergency, shall be open to the public at all times. The GSA shall maintain the landscaping, irrigation system, and sidewalks in a manner consistent with Denver standards.

5. Term: The term of the grant of access and use of the Parkway Triangle shall be perpetual until GSA provides six-month written notice to Denver's Managers of Public Works and Parks and Recreation of its intention to cease using or accessing the Parkway Triangle. At the end of the 6-month notice time frame, all rights of GSA to the parkway Triangle pursuant to this Agreement shall terminate and GSA shall vacate the Parkway Triangle. The maintenance obligation and the associated license set forth in this Agreement shall be perpetual until the GSA provides six-month written notice to Denver's Manager of Public Works and Parks and Recreation of its intention to cease such maintenance or Denver's Managers of Public Works and Parks and Recreation determines that the GSA has failed or refused to provide such maintenance as specified herein after being provided written notice and sixty (60) days to come into compliance. Upon maintenance responsibilities for the Parkway Triangle returning to Denver, Denver shall be under no obligation to keep or preserve the improvements thereon or to maintain the same to any specific standards other than those determined by Denver.

6. General Provisions:

A. Reasonable Efforts; Good Faith: The GSA and Denver ("**Parties**") agree to work diligently together and in good faith, using reasonable efforts to perform the terms and conditions of this Agreement, to resolve any unforeseen issues and disputes, and to expeditiously take such actions as are necessary and appropriate to perform the duties and obligations of this Agreement.

B. Fair Dealing: In all cases where the consent or approval of one Party is required before the other may act, or where the agreement or cooperation of the Parties is separately or mutually required as a legal or practical matter, then in that event the Parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Agreement as the same are set forth herein, subject to the terms hereof; provided, however, that nothing in this Agreement shall be construed as imposing on either Party any greater duty or obligation to the other than that which already exists as a matter of law, including but not limited to any fiduciary duty or other responsibility greater than that of reasonable parties contracting at arm's length.

C. Financial Interests: The Parties agree and covenant that any financial interests created in, or used to secure financing and payment for the costs of, any work performed under this Agreement, including but not limited to any bonds, certificates of participation, purchase agreements, and Uniform Commercial Code filings, shall expressly exclude, and not encumber, property title, rights and interests held by Denver from such debt or financial security contained in such financial instruments. The terms and conditions of this Agreement must be expressly recognized in any such financial instrument(s), which must specifically acknowledge and affirm that any financial interests created by the financial instrument(s) are subordinate to this Agreement.

D. Appropriation: Notwithstanding any provision of this Agreement to the contrary, the Parties agree that the rights and obligations under this Agreement are contingent upon all funds necessary for work or expenditures contemplated under this Agreement being budgeted, appropriated and otherwise made available by the respective Parties. The Parties acknowledge that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of Denver or GSA.

E. Non-waiver: No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

F. Examination of Records/Audit: The Parties agree that, during the term of this Agreement, any duly authorized representative of either Party, including the Denver Auditor or designee, shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the other Party involving any matter related to this Agreement. Any Party shall be entitled to review and audit the performance of this Agreement at that Party's sole expense.

G. Applicable Law/Exercise of Authority: The Parties agree to comply with all applicable Federal, State and local statutes, charter provisions, ordinances, resolutions, rules, regulations, policies, and standards in existence as of the effective date of this Agreement or as may be subsequently enacted or adopted and become applicable; provided, however, both Parties agree that neither Party shall enact or adopt any law, ordinance, resolution, rule, regulation, policy or standard (other than those necessary to comply with a lawful citizen initiative or referendum) which would substantially interfere with or diminish the obligations and rights

under this Agreement or result in effectively nullifying this Agreement, in whole or part, but otherwise this paragraph shall not limit the powers and authority of the respective Parties.

H. No Discrimination In Employment: In connection with the performance of work under this Agreement, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Parties further agree to insert the foregoing provision in all approved contracts and subcontracts hereunder.

I. Conflict of Interest: The Parties agree that no official, officer or employee of Denver shall have any personal or beneficial interest whatsoever in the services or property described herein, and the GSA further agrees not to hire or contract for services any official, officer or employee of Denver or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

J. Liability:

1) To the extent authorized by law, the GSA shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of any action or omission of the GSA or its officers, employees, and agents in connection with the subject matter of this Agreement. (See, Federal Tort Claims Act, as amended.)

2) To the extent authorized by law, Denver shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees, incurred as a result of any act or omission by Denver, or its officers, employees, and agents in connection with the subject matter of this Agreement.

3) Nothing in this sub-section 6.J. or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations Denver may have under the Colorado Governmental Immunity Act (§24-10-101, C.R.S., et. seq.) or to any other defenses, immunities, or limitations of liability available to the Parties against third parties by law.

K. Force Majeure: Neither Party shall be liable for delay or failure to perform hereunder, despite good faith efforts to perform, if such delay or failure is the result of *force majeure*, and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any *force majeure*. Timely notices of the occurrence and the end of such delay shall be provided by the Party asserting *force majeure* to the other Party. "*Force majeure*" shall mean causes beyond the reasonable control of a Party such as, but not limited to, adverse weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities other than the Parties.

L. Further Assurances: From time to time, upon the request of a Party, the other Party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting Party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting Party, be necessary or desirable in order to effectuate, complete or perfect the rights of said Party under this Agreement, provided said requesting Party is currently in full compliance with the provisions of this Agreement and has tendered or offered to tender any reciprocal instruments, certificates and documents to which the other Party is entitled under the Agreement.

M. Contracting or Subcontracting: Any work that is allowed to be contracted or subcontracted under this Agreement shall be subject, by the terms of the contract or subcontract, to every provision of this Agreement. Compliance with this provision shall be the responsibility of the Party who arranged the contract or authorized the subcontract. No Party shall be liable or have a financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which the other Party contracts or has a contractual arrangement.

N. Governing Law; Venue: This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, and the applicable provisions of the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the United States District Court for the District of Colorado.

O. No Third Party Beneficiaries: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of the Parties that any person or entity other than the GSA and Denver receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

P. Claims: In the event that any claim, demand, suit, or action is made or brought in writing by any person or entity against one of the Parties related in any way to this Agreement, the Party in receipt of same shall promptly notify and provide a copy of said claim, demand, suit, or action to the other Party.

Q. Notice: All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered personally, or by appropriate facsimile transmission (receipt verified by telephone), or by certified mail, return receipt requested, to the following:

To Denver:

Manager of Public Works
201 W. Colfax, Dept 608
Denver, CO 80202

Manager of Parks and Recreation
201 W. Colfax, Dept 601
Denver, CO 80202

City Attorney
City and County of Denver
1437 Bannock Street, Room 353
Denver, Colorado 80202

To the GSA:

United States General Services Administration
Public Buildings Service
Colorado Service Center
Attn: Mark Pearce
1 Denver Federal Center
Gate 2, Bldg. 41, Dock E17A, Rm. 177
P.O. Box 25546
Denver, CO 80225-0546

The persons or addresses set forth above may be changed at any time by written notice in the manner provided herein.

R. Entire Agreement: This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire Agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

S. Amendment: Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.

T. No Assignment: No Party shall assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the other Party. Consent for the City shall be through the Managers of Public Works and Parks and Recreation.

U. Severability: Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term or condition that will achieve the original intent and purposes of the Parties hereunder.

V. Headings for Convenience: Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

W. Authority: Each Party represents that it has taken all actions that are necessary or that are required by its applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Party and to bind the Party to its terms. The person(s) executing this Agreement on behalf of each Party represents that he/she/they have full authorization to execute this Agreement.

X. Execution of Agreement: This Agreement shall not be or become effective or binding, and shall not be dated, until it has been fully executed by all signatories of Denver and the GSA.

Y. Electronic Signatures and Electronic Records: The GSA consents to the use of electronic signatures by Denver. The Agreement, and any other documents requiring a signature hereunder (other than the quit claim deed which shall be manually signed and notarized), may be signed electronically by Denver in the manner specified by Denver. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

WHEREFORE, Denver and the GSA have entered this Agreement as of the latest date set forth on the signature blocks below.

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: FINAN-201414786-00

Contractor Name: General Service Administration

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

*TO GSA PAGE
GSA FOLLOW.
SIGNING
CONCURRENTLY.*



GSA Parcel

A parcel of land located in the Northwest Quarter of Section 3, Township 3 South, Range 68 West, 6th Principal Meridian, City and County of Denver, State of Colorado, described in Book 2238 at Page 187, recorded on May 20, 1912, in the City and County of Denver Clerk and Recorder's office, and that portion of vacated Fox Street described as Parcel "W" in Ordinance No. 339, Series of 2011, being more particularly described as follows:

COMMENCING at the 21.00 foot x 19.00 foot range point, located at Fox Street and W. 13th Avenue (monumented with an 1-1/2" brass cap, as shown on the land survey plat deposited in the City and County of Denver Surveyor's Office in Book 91 at Page 55), **WHENCE** the 21.25 foot x 18.00 foot range point, located at Elati Street and W. 13th Avenue (monumented with an 1-1/2" brass cap, as shown on the land survey plat deposited in the City and County of Denver Surveyor's Office in Book 91 at Page 55) bears S89°47'28"E a distance of 331.96 feet (Basis of Bearing-assumed);

THENCE S38°49'03"W a distance of 75.50 feet to the northwesterly corner of said parcel of land described in Book 2238 at Page 187 and the **POINT OF BEGINNING**.

THENCE S89°47'28"E, coincident with the northerly lines of said parcels of land described in Book 2238 at Page 187 and Parcel "W" in Ordinance No. 339, Series of 2011, a distance of 61.14 feet;

THENCE S00°11'02"W, coincident with the easterly line of said Parcel "W", a distance of 107.05 feet to the northeasterly right-of-way line of Speer Boulevard as described in Ordinance 104, Series of 1904;

THENCE N29°32'28"W, coincident with said northeasterly right-of-way line, a distance of 123.31 feet and to the **POINT OF BEGINNING**.

